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OCT 19 2004

In re Application of
Cheng-Chieh Chuang
Application No. 10/603,901
Filed: October 16, 2003
Attorney Docket Number: 39524.6900

OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition filed September 27, 2004, under 37 CFR 1.182 in response to the Notice of Omitted Items mailed September 11, 2003.

The petition is **DISMISSED**.

The application was deposited June 25, 2003. However, on September 11, 2003, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" stating that the application had been accorded a filing date of June 25, 2003 but advised that Figure 4b described in the specification appeared to have been omitted.

A response which included a copy of Figure 4b, purportedly omitted from the application on filing, was submitted with a statement that Figure 4b was included with the application as filed. The response filed October 16, 2003 included a petition fee in the amount of \$130.00 and further asserted that "copies of all the figures were attached to the priority application, which was included with the filing documents of the present application."

The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

In this case, petitioners never submitted evidence that Figure 4b was in fact included with the application upon filing and therein, the date a copy of the omitted item, Figure 4b, was supplied is the date the application was deemed complete and thus October 16, 2003 became the filing date.

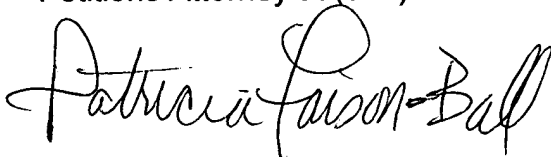
A corrected filing receipt was thus generated with October 16, 2003 as the filing date.

The agency acknowledges that a subsequent petition/response and petition fee was filed December 23, 2003 for which no Agency decision was ever rendered. The petition fee submitted December 23, 2003 has been applied and will be used for this petition.

Accordingly, since the petition filed October 16, 2003 did not satisfy the requirements of 37 CFR 1.182 it is therefore subject to dismissal. Likewise, the instant petition filed September 27, 2004 still has not stated a claim for which relief can be granted since it still does not provide evidence that the application as filed included a copy of Figure 4b.

In view thereof, the filing date will not be changed from October 16, 2003 and the updated filing receipt mailed December 2, 2003 will not be withdrawn. The application is being forwarded to Technology Center 2655 for examination in due course. If petitioners can locate evidence to substantiate the claim that Figure 4b was included in the application as filed on June 25, 2003, they may opt to file a request for reconsideration but as it stands, the responses filed October 16, 2003, December 23, 2003 and September 27, 2004 are effectively DISMISSED.

Telephone inquiries related to this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions